

TRANSMITTAL SLIP		DATE
TO:		
ROOM NO.	BUILDING	
REMARKS:		
EXA <u>CS</u> 05 JAN 1988		
DDA/Registry (File)		
DDI has action.		
D/OC received info copy.		
FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 36-8
1 FEB 66 241

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	EXDIR		X		
4	D/ICS				
5	DDI	X			
6	DDA		X		
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/OCA				
14	D/PAO				
15	D/PERS				
16	D/Ex Staff				
17	C/MPSS/DI		X		
18	D/OGI		X		
19	D/Commo/DA		X		
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SUSPENSE		Date			

Remarks

D/ Executive Secretary
17 Dec 87

Date

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United States Department of State

*Bureau of
International Communications
and Information Policy**Washington, D.C. 20520*

December 10, 1987

Dear Chairman Patrick:

Thank you for your letter regarding an arrangement between the United States and the United Kingdom which would allow U.S. firms to take full advantage of the increasingly open telecommunications environment in the U.K. At the outset, I want to assure you that the Department of State has and will continue to elicit the views of the Federal Communications Commission in this matter even though the contemplated arrangement does not entail binding international obligations which could restrict the scope of regulatory discretion available to the FCC under the Communications Act of 1934.

Periodic bilateral communications and information policy discussions with the U.K. were initiated over five years ago. The Department of State has always invited the FCC to contribute and participate in the discussions which have been held every year and a half since their inception. Starting with our initial session we have focused attention on promoting bilateral interests in liberalization as well as building on our mutuality of interests in ITU, INTELSAT and INMARSAT. The FCC has made important contributions to this process especially in regard to explaining our own domestic regulatory activities which have been very helpful to the UK's own internal deliberations.

During the November 1986 bilaterals, to which the FCC did not send a representative, the British government identified the then-contemplated regulatory changes which would allow for increasingly liberalized use of international private leased circuits. In order to take full advantage of this incremental change as contemplated in the U.K.'s regulations which are presently in effect, an international arrangement between the U.K. and another country would be necessary.

The Honorable
Dennis Patrick, Chairman,
Federal Communications Commission,
1919 M Street, N.W.,
Washington, D.C.

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The provisions of Sec 4.2 of the U.K.'s Draft Class License for Value Added and Data Network Services already makes clear that international private line circuits may be used for Value Added Services absent the arrangement we presently contemplate. This arrangement would, pursuant to 4.2 (iii)(b) allow the use of international private circuits to be used to provide other than value-added services. Accordingly, we view the proposed arrangement as a key element of introducing liberalization internationally which goes beyond those other uses already specifically contemplated by the license.

Immediately following the bilaterals and on an ongoing basis, the Department has consulted closely with the FCC, NTIA and other interested agencies in developing an appropriate framework to implement this initiative which is compatible with the stated policy goals of the U.S. as well as U.K. As I previously indicated to you and Assistant Secretary Sikes, there are a number of advantages to the U.S. to be derived from an arrangement:

- It will directly benefit U.S. companies operating in the U.K.
- It will further encourage the U.K.'s step-by-step liberalization by assisting the government to overcome temporary domestic policy roadblocks.
- It will demonstrate to other countries the U.S. interest in working to achieve liberalization of telecommunications services internationally which will inevitably come in stages.
- It reinforces an important dimension of the U.S. approach to the upcoming WATTC in demonstrating our willingness to deal with individual countries to our mutual advantage.

Moreover, we are convinced that it offers us an unusual opportunity to take advantage of liberalizing interests in another country without prejudging future changes or arrangements which we might optimally desire.

As your letter notes, we have shared draft texts of an arrangement with the government of the U.K. The proposed arrangement is compatible with current FCC domestic regulations, having benefitted from numerous interagency meetings in which members of your staff played an active and continuous role. Indeed, while an excellent case can be made to the contrary, references to Article 31 of the ITU Convention were deleted from the draft text in our attempt to accommodate a concern you had raised with your staff.

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Since your letter references this concern, and final language has not been agreed upon, it seems worthwhile to revisit this issue and clarify what appears from your letter to be a misunderstanding as to the import of referencing Article 31 of the ITU Convention. I certainly agree that we want to promote internationally as well as domestically the offering of services on as unregulated a basis as possible. Indeed, it is towards this very end that we wish to highlight the flexibility provided by the ITU Convention and associated regulations. However, your letter states: "that enhanced services should be offered on an unregulated basis and that the provisions of the ITU Convention should not be extended to the offering of these unregulated services." The ITU Convention does not distinguish obligations of ITU Members based on whether a service is "basic" or "enhanced" (this is U.S. domestic terminology) or "basic" and "value-added" (the terms employed by most of the rest of the world). Specifically, the obligations contained in Article 44 of the ITU Convention relate, in part, to private operating agencies "which engage in international services", not only to those which engage in international basic services. This factor was highlighted in my letter to Chairman Fowler of May 30, 1985 relating to CC Docket 83-1230.

In the broader context, we have successfully pursued a policy course in ITU related matters taking advantage of and reinforcing the liberalizing mechanisms available in the ITU. It is not unlike "driving sheep over London Bridge" to keep the rights as well as obligations in view. Further, since our interests go beyond the U.K., our efforts at liberalization elsewhere could be severely and needlessly handicapped if our proposed bilateral arrangement is perceived as requiring countries to break from their international obligations to the ITU.

A U.S.-U.K. arrangement, as presently envisioned, is already contemplated by Articles 4 of the existing Telegraph and Telephone Regulations and Article 31 of the ITU Convention. We need make no apologies for this. On the contrary, by highlighting the ITU's inherent support of bilateral arrangements, we pre-empt those countries who wish to interpret ITU "recommendations" as "requirements" and avoid the unnecessary perception that our action undermines the ITU.

In a related matter, this approach will also strengthen our hand in dealing with the differing national views on the upcoming WATTC. We have criticized the draft telecommunications regulations produced by PC/WATTC as entailing obligations beyond the regulatory scope of the present ITU Convention. I am concerned that any perceived

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inconsistency regarding our adherence to our current ITU obligations will diminish the force of our arguments against the "any entity" language of the PC/WATTC draft.

I obviously do not believe it is a deal-breaker whether the U.S.-U.K. arrangement references our countries' mutual ITU obligations in the text of the principles evidencing the arrangement rather than in an accompanying covering letter, but I do believe it is important for the FCC to recognize that this interest on our part is intended to help set the scene for expanding rather than limiting our mutual interest in minimalist regulation here and abroad.

I concur that it is in the interests of the U.S. to encourage the U.K., and indeed, all other countries, to allow for the possibility of multiple providers of international facilities. Accordingly, our draft language provides for a periodic review of the development and use of international private leased circuits to ensure the continued advancement of the public interests of the U.K. and the U.S. This provision will allow us an open forum to demonstrate, with FCC participation and advice, the benefits of competition in the provision of international facilities at precisely the time the British government focuses on these issues domestically. Indeed it may encourage the U.K. to consider this sooner rather than later. I concur also that we should make clear that conclusion of the contemplated arrangement is but a first step toward establishing greater opportunities for U.S. firms to offer value-added and data services in the U.K. on the same basis that British enhanced service providers offer service in the U.S. However, the appropriate place to make this point is in our covering letter rather than in the statement of principles. We must, as in other areas of foreign policy, promote and build upon positive initiatives rather than pursue a counterproductive course of holding a mutually beneficial arrangement as a bargaining tool for other concerns.

Since receiving your letter further interagency and industry meetings have been held and several points raised by FCC staff. Private sector interests representing more than 250 of this nation's community of users and service producers, reiterated their keen interest in the initiative as having direct benefits to U.S. interests. Indeed the only serious concerns raised was over delay in implementing the proposed arrangement.

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In our continuing work with representatives of the U.K. government to finalize an appropriate arrangement we will, as in the past, seek the advice and counsel of the FCC. I appreciate your personal interest in this matter and look forward to your help in avoiding further delays.

Sincerely,

A handwritten signature in dark ink, appearing to read "Diana Lady Dougan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Diana Lady Dougan
U.S. Coordinator and Director

cc: Commissioner Quello
Commissioner Dennis
Charles Cobb
Lt. Gen. John Myers
Dr. Thomas P. Quinn
Alfred Sikes
S. Bruce Smart